

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT 28 GUDU - ABUJA

DELIVERED ON WEDNESDAY THE 30TH DAY OF JUNE 2021

BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE.R. OSHO-ADEBIYI

SUIT NO.FCT/HC/CV/578/2019

BETWEEN:

1. REIEVENUE NIG. LTD=====PLAINTIFFS

2. YA'KAKURI INTEGRATED SERVICES LTD

AND

PROF. TUNDE ADENIRAN=====DEFENDANT/APPLICANT

RULING

By a motion on notice brought pursuant to Order 43 Rule 1 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, the Applicant is praying the Court for the following reliefs;

- AN ORDER of this Honourable Court dismissing this suit
- AN ORDER of this Honourable Court striking out the suit or the name of the Defendant/Applicant for lack of any reasonable cause of action.
- AN ORDER of this Honourable Court dismissing this suit for constituting a brazen abuse of the process of this Honourable Court.
- AN ORDER of this Honourable Court dismissing this suit against the Defendant/Applicant for lack of jurisdiction and misjoinder of parties.

The grounds upon which the application is brought are that the suit is incompetent, it discloses no cause or reasonable cause of action against the Defendant/Applicant. That Proper parties are not before the court. That the suit is frivolous and being hinged on false claims by the Plaintiff/Respondent. That the suit constitutes abuse of court process, thereby robbing the court of the jurisdiction to entertain same. That there is no contractual relationship between the parties to this suit. That the condition precedent to instituting this suit has not been complied. That the originating process was not signed by a known lawyer as required by law. That the writ has expired before it was served on the Defendant. That the Plaintiffs' allocation is not the same as that of the Defendant's Company.

In support of the application is a 13-paragraph affidavit deposed to by Chika Edumobi, a Litigation officer in the firm representing the Defendant/Applicant. From the facts deposed, it is Defendant/Applicant's position that the Writ of Summons and statement of claim dated and filed on the 11th December 2019 was only served by substituted means on the 15th of January 2021.

That the Defendant has not been personally served with the originating processes in this matter. That the Defendant is not a proper party in this suit. That the Defendant is just one of the directors of Aderet Publishers Ltd which is an incorporated company, and the Original allottee to Plot 3716, Lugbe 1 Extension, Abuja and attached the Certificate of Occupancy as Exhibit A. That the purported Terms of grant and statutory right of occupancy annexed to Plaintiff's Claim revealed that plaintiff was purportedly allotted Plot 3717, Lugbe 1 Extension Abuja and not Plot 3716

which was rightly allocated to Aderet Publishing Ltd. That the plaintiff instead of reverting to the issuing authorities to trace the said Plot 3717 purportedly allocated to trespassed and is contesting Plot 3716 rightly allocated to Aderet Publishing. That the Plaintiff is suing the wrong party in this suit as Defendant is not a party to any of the transaction leading to this suit.

That the Honorable Minister of FCT, The Federal Capital Territory Authority and Abuja Municipal Area Council, the Authorities who allots land and manages lands in FCT are not joined in the suit.

That the Writ of summons and Statement of Claim has long expired and that on the face of the originating process, same was not signed by an identified person as required by law. That Aderet Publishers Ltd is the rightful owner of plot Number 3716 on cadastral Zone 07-07 within AMAC FCT Abuja having a total area of 835.215sqm. Having been issued with a Certificate of Occupancy No 000475 with Certificate No MZTP/LA/2001/MISC.2338. That the Defendant's Company Aderet Publishing Company duly applied for and was granted plot Number 3716 on cadastral Zone 0707 within AMAC FCT Abuja.

That the Defendant's Company Aderet Publishers Ltd upon the commencement of the Abuja recertification exercise promptly applied for recertification sometimes in 2012, and the said Certificate of Occupancy was dully recertified. Applicant attached a Copy of the Abuja Geographical Information System payment document and acknowledgement as Exhibit C & D respectively. That the Defendant's Company, Aderet publishers Ltd has been in peaceful possession since the time of the allocation till date.

That the Plaintiffs do not have any legal right over plot Number 3716 on cadastral Zone 07-07 within AMAC FCT Abuja, which rightfully belongs to the Defendant's Company.

The Applicant's Counsel in the written address filed in support of the application, raised three (3) issues for determination, thus;

- Whether this suit is Competent and discloses any cause or reasonable cause of action against the Defendant/Applicant.
- Whether the Plaintiff, by law can maintain this action in brazen abuse of the process of this Court.
- Whether the Honourable Court has the Jurisdiction to entertain this suit as currently constituted.

Arguing issue one, Counsel submitted that from the statement of facts, the statement of claim and affidavit in support of this application, it shows that there is no connection or contractual relation between the Plaintiffs and the Defendant. Submitted that the Defendant is not the proper party and the plot been aimed is not the same as the one occupied by the Defendant's Company.

Counsel submitted that the claim of the Plaintiff from the entire pleading does not disclose any cause of action against the Defendant and is thus not sustainable in law against the Defendant more so as the defendant is not a party to any of the transaction leading to this suit.

Counsel submitted further that the nonjoinder of a necessary party like Aderet Publishers Ltd raises a fundamental question of jurisdiction which can vitiate the entire proceeding and urge the Court to hold that the nonjoinder of all necessary parties, robs the Court of jurisdiction to hear this case.

Arguing issue two which is whether the Plaintiff, by law can maintain this action in brazen abuse of Process of this Court. Counsel submitted that this case is an abuse of the processes of this Honourable Court as same is frivolous and scandalous initiated to irritate and embarrass the Defendant more so as writ in this suit has long expired in violation of the rules of this Court. Counsel submitted further that the writ and statement of Claim is incompetent for failure to disclose the identity of learned counsel who signed it by marking and/or making a tick beside his name as required by Section 24(2) (1) of the Legal practitioners Act (LPA) Cap. 207 Laws of the Federation of Nigeria 1990. Counsel urged the Court to dismiss the suit against the Defendant or strike out the name of the Defendant in this suit. On whether the Honourable Court has the Jurisdiction to entertain this suit as currently constituted, Counsel submitted that issues of jurisdiction being a threshold issue must be looked into first. Counsel submitted that the plaintiff in this suit has no cause of action against the Defendant which said cause of action is an important feature for the invocation of the jurisdiction of the Court. Counsel submitted further that the writ of summons is defective in that it has since expired having been issued since the 11th day of December 2019 and no effort was made by the Plaintiff to pursue his case diligently and no subsequent application has been brought for the renewal of the writ. Counsel urged the Court to dismiss the suit for nondisclosure of any reasonable cause of action, abuse of Court process and failure to comply with the condition precedent to invoking the jurisdiction of the Court. Counsel relied on the following;

- The Owners of MV grande "Atlantico" vs. MrsObiageliEzeanochikwa (2013) All FWLR (Pt. 680) 1414. Odejayi Anor. vs. Henley Industries Limited (2013) LPELR-20368(CA)
- ElugbeOmokhare (2004) 11-12 S.C. 60.
- Tanimu v. Rabiou (2018) 4 NWLR (Pt. 1610) 505;
- B.o.l ltd v. Awojugbagbe Light Ind Ltd. (2018) 6 NWLR (Pt. 1615) 220;
- Agwasim v. Ojichie (2004) 10 NWLR pg 615, prt 882, ratio 2.
- Benkay Nigeria Limited. VS. Cadbury Nigeria Limited (2012) 3SC (PT. 111) 169;
- Ojo v Adedeji (2009) 23 W.R.N at 74.
- Anukwu vs Eze (2012) 11 NWLR (PT 1310) 50;
- Bello V AG Oyo State(1986) pt 45, 828 at 876; e.t.c

The Plaintiffs in this case were served with the Defendant's notice of preliminary objection on the 25th of January 2021 but the Plaintiffs failed to file a counter affidavit to the objections raised by the Defendant, the conclusion to be drawn is that the Plaintiffs have no answer to the objections and is deemed to have accepted them as correct. Be that as it may, the absence of the Plaintiff's counter affidavit does not mean that the preliminary objection will automatically succeed. The Court still has a duty to determine whether or not the preliminary objection has merit and is sustainable in law. See the case WANINI-EMI v. IGALI & ORS(2009) LPELR-5092(CA)

Having read the Defendant's notice of preliminary objection, the grounds backing the application, the counter affidavit and the written address of Counsel, the issues to be determined in this application are:

- Whether this suit as presently constituted discloses any reasonable cause of action against the Defendant.
- Whether this suit is competent having regard to the Writ of Summons and Statement of Claim.

With respect to issue 1, which is “whether this suit as presently constituted discloses any reasonable cause of action against the Defendant”. I have carefully read the processes filed, particularly the statement of claim, as well as the submissions of learned counsel for the Defendant in the application. The Defendant/Applicant contends that the Plaintiff has no cause of action against the Defendant, and so this court is urged to dismiss the case. The law is well certain that to ascertain a cause of action, the immediate materials a court should look at are the writ of summons and the averments in the statement of claim, and it is by examining them that a court can satisfy itself on the actual grouse of a party and the remedy or reliefs it is seeking from the court.

In the case of UWAZURUONYE v. GOVERNOR OF IMO STATE & ORS (2012) LPELR-20604 (SC) Per WALTER SAMUEL NKANU ONNOGHEN, JSC in Pp 20 - 21 Paras D – B held

"It is settled law that a cause of action is the fact or combination of facts which gives rise to a right to sue or institute an action in a Court of law or tribunal. The term also includes all things which are necessary to give a right of action and every material fact which is to be proved to entitle the plaintiff to succeed/relief..On the other hand, a reasonable cause of action is a cause of action which, when only the allegation in the

Statement of Claim and, I may add, originating process, are considered have some chances of success”

In the instant case, from the writ of summons the claimant is claiming for the following reliefs;

- *“A DECLARATION that the 1st plaintiff is the original allottee of the property known as Plot 3717, Lugbe I Extension, Abuja measuring approximately 8.48sqm and evidenced by 'Offer of Terms of Grant/Conveyance of Approval' of Statutory Right of Occupancy dated 29/6/98 issued to the 1st Plaintiff by the Honourable Minister of the Federal Capital Territory.*
- *A DECLARATION that by the subsequent transfer of 1st plaintiff's right and interest over the said plot of land to the 2nd plaintiff through a deed of sale, the 2nd plaintiff becomes the lawful, legal and beneficial owner of the said property i.ePlot 3717, Lugbe 1 Extension.*
- *A DECLARATION that any subsequent purported allocation or reallocation, sale or grant of any type Of title in respect of the said Plot 3717 Lugbe 1 Extension to the defendant or any other person or persons is unlawful, illegal, null and void and of no legal effect whatsoever.*
- *A DECLARATION that the act of trespass and forceful entry into the said property and removal of the plaintiffs' Iron gate and other building materials by the Defendant is unlawful, wrongful, oppressive, and provocative.*
- *AN ORDER of perpetual injunction restraining the defendant, either by himself, his servants, privies, agents or by whatever name*

called from trespassing or further trespassing, invading or further invading or encroaching on the rights and interest of the plaintiffs over Plot 3717, Lugbe I Extension, Abuja

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From the statement of claim, the facts that gave rise to this suit is that the plaintiff is the original allottee of the property known as Plot 3717, Lugbe 1 Extension, Abuja measuring approximately 8.48sqm and evidenced by 'Offer of Terms of Grant/Conveyance of Approval' of Statutory Right of Occupancy dated 29/6/98 issued to the Plaintiff by the Honourable Minister of the Federal Capital Territory. That sometime in August 2019, the Defendant led over 20 armed thugs into the plaintiffs' said plot and removed the 2nd plaintiff's iron gate and blocks and when confronted, the defendant tried to justify his actions by laying claim to the land with faked and forged land papers purportedly issued to him by Abuja Municipal Area Council. That plaintiffs have since the past 20 years been enjoying untrammelled possession of the said plot of land through various acts of ownership, which includes planting of survey beacons, farming on the land, enclosing the land with concrete fence, depositing sharp sand, stone chippings and blocks and other building materials and implements on the land until the recent invasion by the defendant, resulting to this suit.

I have critically examined the writ of summons and statement of claim to ascertain whether there exist a reasonable cause of action and once an allegation in a pleading show a real controversy that are capable of leading to the grant of a relief, the pleading cannot be rightly said to disclose no cause of action. From the claim as stated in the writ of summons as stated above and the facts from the statement of claim, there is indeed the

existence of a cause of action, however, the question at this point is does the claim of the Claimant disclose any reasonable cause of action against the Defendant? The Defendant/Applicant's counsel's contention is that this suit is incompetent as it does not disclose any cause or reasonable cause of action against the Defendant as the Defendant is not the proper party to be sued and that the proper parties are not before this Court. From the unchallenged and uncontroverted facts as stated in the affidavit in support of this application particularly paragraphs 7(e to h) the Defendant stated that;

“e. That the Defendant is just one of the director of Aderet Publishers which is an incorporated company. and the Original allottee to Plot 3716, Lugbe I Extension. Abuja. The said plot of land which the Plaintiff seems to be contesting. The Certificate of Occupancy is attached as Exhibit A.

f. That the purported Terms of grant and statutory right of occupancy annexed to Plaintiff Claim revealed that plaintiff was purportedly allotted plot 3717 Lugbe Extension Abuja and not plot 3716 which was rightly allocated to Aderet Publishing Ltd.

g. That the plaintiff instead of reverting back to the issuing authorities to trace the said Plot 3717 purportedly allocated to it is instead trespassing and contesting plot 3716 rightly allocated to Aderet

h. That the Plaintiff is suing the wrong party in this suit as Defendant is not a party to any of the transaction leading to this suit.”

The Defendant also attached a certificate of occupancy with certificate no.00475, showing that Plot 3716 measuring 8356.215sqm is allocated to Aderet Publishers Limited. From the entire facts pleaded in the statement of claim nowhere was Plot 3716 mentioned. In fact, the offer of terms of grant pleaded and attached to the statement of claim clearly states that Plot 3717 with about 8,8480m² is allocated to the Claimant and the Defendant in the affidavit and document attached stated that Aderet Publishing Limited which he is a director in the Company is the owner of Plot 3716 with about 8356.215sqm. The land being claimed by the Claimant is clearly different from that stated by the Defendant both in the plot number and the size of the Plot. The inference to be drawn is that the Claimant's claim has failed to disclose any cause or reasonable cause of action against the Defendant as there is no nexus or connection with the Plot being claimed by the Claimant with that of the Defendant's Company. There is clearly no controversy between parties for this Court to litigate upon as the proper party is not before this Court and before an action can succeed, the Parties must be shown to be the proper Parties to whom rights and obligations arising from the cause of action can attach.

The Supreme Court in **U.O.O. NIG. PLC v. OKAFOR & ORS** (2020) LPELR-49570 held that the question of proper Parties is a very important issue, which would affect the jurisdiction of the Court, since it goes to the foundation of the Suit in limine. In effect, where the proper Parties are not before the Court then the Court lacks jurisdiction to entertain or hear the Suit. Also, in **UTIH V. ONOYIVWE** (1991) 1 NWLR (pt. 166) 166 SC, per Karibi-Whyte, JSC, stated that

“It is a well settled principle for the administration of justice in our judicial system that a matter cannot be heard on its merits unless there is a cause of action, and the Plaintiff has the right to bring the action... The Court in which the action has been brought can only validly exercise jurisdiction to hear and determine the matter in such circumstances.”

I therefore agree with the submission of the learned Counsel for the Defendant/Applicant that the proper and necessary parties are not before this Court and no cause of action is shown to exist between the Claimant and the defendant as the allegation as stated in the pleadings is devoid of any controversy against the Defendant capable of leading to the grant of a relief thereby robbing this Court of its jurisdiction to entertain this suit and I so hold.

It will therefore be an academic exercise in futility for this Court to determine the other issues raised by the Defendant counsel in this suit having held that it lacks the requisite jurisdiction to entertain the substantive suit.

Consequently, the objection is hereby upheld and this suit as presently constituted is hereby struck out.

Cost :- cost of N250,000.00 is hereby awarded against the Plaintiffs.

Parties: Absent

Appearances: Chuka Egbo for the Plaintiff/Respondent. P. O. Uleyo for the Defendant/Applicant.

HON. JUSTICE MODUPE OSHO-ADEBIYI

JUDGE
30TH JUNE, 2021